

# Determining Fair Share Objectives

## What is a Fair Share Objective?

A fair share objective is an objective based on the capacity and availability of qualified, certified MBEs and WBEs in the relevant geographic market for the procurement categories of construction, equipment, services and supplies compared to the number of all qualified entities in the same market for the same procurement categories, adjusted, as appropriate, to reflect the level of MBE and WBE participation expected absent the effects of discrimination.

- A fair share objective is not a quota.
- A recipient cannot be penalized for not meeting its fair share objectives.
- Unless specifically exempted, all recipients must negotiate fair share objectives.

## How Do I Determine a Fair Share Objective?

### • ESTABLISH A RELEVANT GEOGRAPHICAL AREA

- It may be a geographical portion of a state, a state or a multi-state area.
- Simply ask yourself, "Where do I normally purchase my construction, equipment, service, and supply needs?"

### • DETERMINE THE BASE FIGURE

- Analyze the availability of qualified, certified MBEs and WBEs by utilizing directories, or bidders lists. SBA directories of certified firms, or DOT directories of certified firms are good sources.

When employing this method, separately divide the number of qualified, certified MBEs or WBEs by the number of all businesses to derive a base figure for the relative availability of MBEs or WBEs in the market. Census Bureau data can be used to determine the number of all businesses within the relevant geographic buying market.

- Utilize data derived from a valid, applicable disparity study, no more than 10 years old.
- Use the approved fair share objective of another recipient, with the same or similar relevant geographic buying market, purchasing the same or similar items.

When using the Fair Share Objective (FSO) of another EPA recipient, there must be adjustments made for differences in the markets, and in the recipient's procurement program.

- Other, alternative methods may be used to determine a base figure for the overall objective. Any methodology chosen must be based on demonstrable evidence of local market conditions and be designed to ultimately attain an objective that is rationally related to the relative availability of MBEs and WBEs in the relevant geographic market.

## • **ADJUST THE BASE FIGURE IF NEEDED**

- A recipient must examine the evidence available in its jurisdiction to *determine required adjustments*, if any, needed to the base figure in order to arrive at the fair share objectives.

## **When Do I Submit My Fair Share Objectives, and How Long are They Effective?**

- A recipient must submit its proposed MBE and WBE fair share objectives and supporting documentation to EPA within 90 days after its acceptance of its financial assistance award.
- EPA must respond in writing to the recipient's submission within 30 days of receipt, either agreeing with the submission or providing initial comments for further negotiation. Failure to respond within this time frame may be considered as agreement by EPA with the fair share objectives submitted by the recipient.
- MBE and WBE fair share objectives must be agreed upon by the recipient and EPA before funds may be expended for procurement under the recipient's financial assistance agreement.
- FSO will remain in effect for three fiscal years unless there are significant changes to the data supporting the fair share objectives.

## **What are the Exemptions From Fair Share Negotiations?**

- Grant and loan recipients receiving a total of \$250K or less in EPA financial assistance in a given fiscal year.
- Tribal recipients of Performance Partnership Eligible grants under 40 CFR Part 35, Subpart B.
- Technical Assistance Grants.
- There is a 3-year phase-in period for the requirement to negotiate fair share goals for Tribal and Insular Area recipients.